

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,

v.

ANTHONY OPOKU,

Defendant.

1:05-cr-272-02-WSD

ORDER

This matter is before the Court on Defendant Anthony Opoku's Objections to the Magistrate Judge's Report and Recommendation [46]. Magistrate Judge Janet F. King's Report and Recommendation [44] (the "Report and Recommendation") on Defendant's Motion to Suppress Statements [28] was entered on October 14, 2005. Defendant objects to the finding in the Report and Recommendation that Mr. Opoku was not in custody when his statement was made and further objects to the conclusion that Miranda warnings were not required to be given to Defendant before he was questioned by federal law enforcement agents. (Def.'s Objections to R&R at 1-2.)

Defendant and the Government do not dispute the facts¹ set out in the Report and Recommendation and they are accepted as the Court's findings of fact.

Discussion

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. by Ernest S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong., § 2 (1976)).

Defendant Opoku objects to the Magistrate Judge's conclusion that he was not in custody and thus that the federal agents who questioned him were not

¹ Defendant disputes the factual finding in the Report and Recommendation that he was not in custody, but he does not dispute the facts describing the circumstances in which his statement was given.

required to give Miranda warnings before he was questioned. Defendant relies on the same arguments he asserted in support of his Motion to Suppress. He does not provide any new or additional authority for his claim that his in-home questioning was improper without Miranda warnings being given.

The Court carefully has reviewed the factual findings and legal conclusions reached in the Report and Recommendation. It is well-settled that “[a] person taken into custody must be advised of his right to remain silent and his right to counsel prior to any interrogation.” United States v. Muegge, 225 F.3d 1267, 1269-70 (11th Cir. 2000). The advisement is required “only if the interrogation was custodial in nature.” Id. at 1270. The test for determining if a person is in custody is whether “under the totality of the circumstances, a reasonable man in the suspect’s position would feel a restraint on his freedom of movement fairly characterized as that ‘degree associated with the formal arrest’ to such extent that he would not feel free to leave.” Id. (citing United States v. Phillips, 812 F.2d 1355 (11th Cir. 1987)). “[T]he reasonable person from whose perspective ‘custody’ is defined is a reasonable *innocent* person.” United States v. Moya, 74 F.3d 117, 119 (11th Cir. 1996). That an investigation “has focused on a suspect does not trigger the need for Miranda warnings in non-custodial settings.” Phillips, 812 F.2d at

1360 (citations omitted). “A policeman’s unarticulated plan has no bearing on the question whether a suspect was ‘in custody’ at the particular time [of the questioning]; the only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.” Berkemer v. McCarty, 468 U.S. 420, 421-22 (1984).

The test, applied here, compels the conclusion that the questioning of Defendant was not custodial. Defendant invited agents into his home knowing they wanted to question him regarding certain firearms purchases. The questioning lasted only about an hour, and took place at Defendant’s dining room table. Defendant was not handcuffed or threatened, and the agents’ weapons were concealed. Defendant was not told he could not leave his home and was not prevented from moving about within his home while the agents were there.² These facts, viewed in their totality, convincingly support that a reasonable person in these

² Defendant exercised his freedom to move within his home. He got up from the table several times, left the table to speak with his wife, and walked within his house. (Transcript of Evidentiary Hearing on Motion to Suppress held on August 11, 2005, at 18-19.) That agents, in the interest of their safety, either accompanied or observed Defendant as he walked about his home, does not, taking into account the totality of the circumstances, support a conclusion that this questioning was custodial.

circumstances would not have considered himself to be restrained in his freedom of movement. Accordingly, the Court agrees with the Report and Recommendation's findings and conclusions, and,

IT IS HEREBY ORDERED that Defendant's Objections to the Magistrate Judge's Report and Recommendation [46] are **OVERRULED** and Defendant's Motion to Suppress Statements [28] is **DENIED**.

SO ORDERED, this 29th day of December, 2005.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE